



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 11, 2024

By CM/ECF

Hon. Arun Subramanian
United States District Court
500 Pearl Street
New York, NY 10007

Re: United States v. Avraham Eisenberg, 23 Cr. 10 (AS)

Dear Judge Subramanian:

The Government respectfully opposes the defendant's proposed jury instruction regarding terms of service. *See* ECF No. 143. While the Government does not object to the Court providing a terms of service instruction, it does not believe that the terms of service instruction should solely be focused on the terms of service for AscendEx, FTX, and Switchboard, given that the defense has also arguments regarding the lack of terms of service on Mango Markets.

To provide a more evenhanded instruction, the Government respectfully requests that the Court give the instruction that the Government proposed in its initial requests to charge, which reads as follows:

You have heard evidence in this case that, at the time of the events at issue, Mango Markets did not have terms of service. You have also heard evidence that various platforms the defendant allegedly used, including FTX, AscendEx, and Switchboard, did have terms of service. Terms of service are civil contracts. This, of course, is a criminal case. It is not a civil case for breach of contract. In considering whether the defendant's conduct was manipulative, fraudulent, or deceptive in violation of the criminal laws at issue in this case, let me caution you that the lack of terms of service cannot render any fraudulent or manipulative conduct legal or immaterial as a matter of law. Similarly, if you find that the defendant violated terms of service on certain platforms, that does not, by itself, mean that the defendant has committed a crime. In determining whether the defendant has committed any of the charged offenses, you are to apply the instructions I have given you today. Terms of service, or lack thereof, are simply evidence that you may give as much, or as little weight, as you see appropriate.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

by: ___/s_____

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